IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9080 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ? **1 to 5 NO**

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THAKOR BHUPATJI ALIAS POPATJI PARBATJI - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MS SUBHADRA G PATEL for Petitioner(s) : 1,
MR DIPEN DESAI ASSTT GOVERNMENT PLEADER for Respondent(s) :1-3,
MR M.IQBAL A SHAIKH for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 19/07/2007

ORAL JUDGMENT :

1. Present petition under Article 226 of the Constitution challenging the order dated

26.1.2007 of detention under the provisions of Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ("the PBM Act" for short) was pressed on the solitary ground of delay in consideration of the representation made by the petitioner.

2. There was no dispute about the essential facts that the impugned order dated 26.1.2007 was served and executed on 11.2.2007 and the petitioner had made his representation on 26.2.2007 which was received in the concerned department of the Central Government on 06.3.2007. It came to be rejected by the Competent Authority in the Central Government on 16.5.2007, admittedly after delay of around 70 days. While admitting these facts, the counter-affidavit filed on behalf of the Union of India only states that the decision of the Central Government was conveyed to Superintendent, District Jail, Bhavnagar, on 17.5.2007 by telegram with a direction to convey the same to the detenu, and thus the representation of the detenu was considered by the Central Government as expeditiously as possible.

3. It was submitted, on the above basis, that not only that the representation of the petitioner was not considered and decided within reasonable time, but the inordinate delay on the part of the Competent Authority was not even sought to be explained by any reasonable cause. It was, therefore, submitted that the petitioner was entitled to be released and continuous detention of the petitioner was not justified due to violation of the provisions of Article 22 (5) of the Constitution. Learned counsel for the petitioner relied upon recent judgment of the Supreme Court in ***Senthamilselvi v. State of Tamil Nadu and Another [(2006) 5 SCC 676]*** wherein it is observed in paragraph 6 that: "*....It needs no reiteration that it is the duty of the Court to see that the efficacy of the limited, yet crucial, safeguards provided in the law of preventive detention is not lost in mechanical routine, dull casualness and chill indifference on the part of the authorities entrusted with their application. When there is remissness, indifference or avoidable delay on the part of the authority, the detention becomes vulnerable.*"

3. Learned A.G.P. appearing for respondents No.1 to 3 and Central Government Counsel Mr.M.Iqbal Shaikh, appearing for Union of India,

fairly conceded to the factual position that delay in consideration of the representation of the petitioner was not duly explained and that the period of preventive detention was, in any case, expiring on 11.8.2007.

4. In the above facts and circumstances, petition is allowed and impugned order dated 26.1.2007 passed by respondent No.2 for detention of the petitioner is set aside. The petitioner shall be released forthwith, if not required to be kept in jail in connection with any other case. Rule is made absolute accordingly. Direct Service is permitted.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)